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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/593,949	10/12/2007	Chris G. Dixon	003006-002548	5444

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Woodard, Emhardt, Moriarty, McNett & Henry LLP  
111 Monument Circle, Suite 3700  
Indianapolis, IN 46204-5137

EXAMINER
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SNYDER, MELISSA A

ART UNIT	PAPER NUMBER
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3763

NOTIFICATION DATE	DELIVERY MODE
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11/25/2011

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DocketDept@uspatent.com

## Office Action Summary

Application No.

10/593,949

Applicant(s)

DIXON ET AL.

Examiner

MELISSA A. SNYDER

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 July 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on \_\_\_\_; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 5) ☒ Claim(s) 1-13 is/are pending in the application.
- 5a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 6) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 7) ☒ Claim(s) 1-13 is/are rejected.
- 8) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 9) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-943)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

### **DETAILED ACTION**

This final rejection is issued in response to amendments and remarks filed on 07/01/2011.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-2, 4, and 6-11 are rejected under 35 U.S.C. 102(e) as being anticipated by US 4,940,459, issued to Noce.

Noce discloses a high pressure dispenser (fig 1) for the application of a medicinal mixture to a desired location, the dispenser comprising: a handle 22 a chamber 20, that receives a medicinal mixture coupled to the handle; a threaded region (fig 2) within the handle; a threaded rod 26 in threaded engagement with the threaded region (fig 2); and a knob 46 coupled to the threaded rod; the dispenser characterized in that: the dispenser includes at least one insert-molded component, wherein the at least one insert-molded component includes at least one of a threaded insert 28 providing the threaded region insert-molded into the handle and a threaded rod 26 insert-molded into the knob (col 4 line 31-40.)

Regarding claim 2, Noce discloses the dispenser of claim 1, characterized in that the threaded insert (120) includes metal or plastic (col 4 lines 31-40.)

Regarding claim 4, Noce discloses the dispenser of claim 1, characterized in that the threaded rod (14) includes metal. (col 4 lines 31-40.)

Regarding claim 6, Noce discloses the dispenser of claim 1, characterized in that an exterior surface of the chamber 22 comprises at least one notch (opening created by 64) dimensioned to engage with at least one corresponding tab 26 on an exterior surface of the handle.

Regarding claim 7, the dispenser of claim 1, characterized in that the handle (22) comprises four exterior longitudinal sides (fig 2).

Regarding claim 8, Noce discloses the dispenser of claim 1, characterized in that the knob (46) has an axial length approximately equal to or greater than the diameter of the knob (fig 2).

Regarding claim 9, Noce disclose the dispenser of claim 1, characterized in that the knob (46) has at least one longitudinal rectangular cavity (fig 2).

Regarding claim 10, Noce discloses the dispenser of claim I, characterized in that the chamber (18) comprises an interior cylindrical surface (fig 2) and a nozzle (44) in fluid communication, and the interior of the chamber has a concave surface in between the interior cylindrical surface and the nozzle (fig 2.)

Regarding claim 11, Noce discloses the dispenser of claim 1, characterized in that the threaded rod is coupled to a piston 24, the piston is insert molded into the threaded rod (col 4 lines 31-40.)

Claims 1, 2, 4-5, 8-13 are rejected under 35 U.S.C. 102(b) as being anticipated by US 6,645,213 issued to Sand et al.

Sand discloses a high pressure medicinal dispenser (title) comprising a handle 306, a chamber 304 that receives a medicinal mixture coupled to the handle, a threaded region 328 within the handle (col 13 line lines 54-55), a threaded rod 318 in threaded engagement with the threaded region, a knob 316 coupled to the handle. As discussed in examiner remarks below "insert-molded" is considered a product-by-process and the claim is only limited to the implied structure. The examiner asserts that that Sand reference discloses said threaded insert and threaded rod, and that insert-molding the threaded region or the rod with the knob would not result in a structurally different product from that as claimed.

Sand discloses the handle (which includes the threaded insert) and the rod as metal or plastic (col 13 lines 37-40 & col 16 line 1-3.)

Sand discloses an exterior surface of the chamber comprises at least one tab (see proximal surface of 304 in figure 25) dimensioned to engage with at least one corresponding notch (see distal surface of 306 in figure 25) on an exterior surface of the handle. Sand shows the chamber having an interior cylindrical surface (chamber is a standard syringe) and nozzle (distal end of 304) in fluid communication, and the interior of the chamber having a concave surface (as shown in distal end of 304 in fig 23-24) in between interior surface and nozzle (see col 13 lines 28-35.) Sand discloses the threaded rod 318 coupled to a piston 308 (plunger has seal on it see col 13 line 50-53). Insert molded is again interpreted as a product-by-process and the examiner asserts

Art Unit: 3763

there is no structural difference between applicant's claimed invention and the prior art of Sands.

Sands discloses the threaded rod including an internal locking mechanism 332, and further including a piston having at least a portion snapped into said internal locking mechanism (col 14 line 42.) Sands discloses the chamber including an external locking mechanism (previously indentified as 'tabs', distal portion of 304 in fig 25) having an orthogonal surface (fig 25) and a tab distal of orthogonal surface (distal exterior surface portion of 304 in figure 25 has a projection which examiner interprets as said 'tab'; also shown in fig 23 and 24.)

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Noce.

Regarding claim 5, Noce does not disclose the dispenser of claim 1, characterized in that an exterior surface of the chamber comprises at least one tab dimensioned to engage with at least one corresponding notch on an exterior surface of the handle. However, he discloses the opposite configuration (as disclosed in rejection of claim 6

Art Unit: 3763

above.) At the time of applicant's invention, it would have been obvious to one ordinary skill in the art to provide the claimed configuration, as this is simply a reversal of parts, and provides no criticality over the opposite claimed configuration.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,940,459 to Noce in view of 6,802,824 to Mickley et al.

Noce discloses applicant's basic inventive concept of a dispenser as disclosed above, including a plastic handle, but does not disclose the handle over-molded with soft rubber. Mickley teaches this feature to be old in the medical devices art (8). At the time of applicant's invention, it would have been obvious to one of ordinary skill in the art to provide rubber over-molded onto the plastic handle to provide a better grip and for increased operator control.

### ***Response to Arguments***

Applicant's arguments filed 07/01/2011 have been fully considered but they are not persuasive. Applicant argues that component is not insert molded either into the handle or into the knob. The examiner first points out that the feature of "insert molded" is a product-by-process, since insert-molding is a manufacturing process. Therefore the claim is not limited to the recited steps but only the structure implied by those steps. The examiner further points out that while individual components are pointed out in the office action, the entire prior art reference is to be considered as a whole. The threaded rod 26 is attached to knob 46 and knob is not rotatable with respect to the rod (col 3 line 64-65.) Therefore whichever process was used still does not result in a structurally

Art Unit: 3763

different product, particularly in light of the plunger, which is integral with the rod, being insert molded.

With respect to claim 6, the Examiner again disagrees. Tab 26 (Noce's threaded shank) engages notch 66 at the exterior surface of the handle, as shown in figure 2. A notch is simply a cutout and the examiner has interpreted the opening as said cutout of the surface.

With respect to claim 7, the examiner inadvertently typed 16 since it was part of applicant's original claim 7. The examiner pointed to figure 2 to show that handle has 4 longitudinal sides. While figure 2 is not shown in 3-D, it is respectfully submitted that figure 2 shows a cutout of section 5, which is shown in section 5, which clearly shows 4 sides present. Figure 2 shows these as extending in a longitudinal direction.

With respect to claim 9, again, the examiner made a typographical error due to the number 20 being included in applicant's original claim 9. As applicant points out, the Examiner referred to knob as 46 and this is what the examiner intended to show regarding claim 9. The rectangular cavities are the cutouts, presumably for better gripping, but nevertheless shown in figure 2.

Regarding applicant's remarks of claim 11, the examiner asserts that although Noce refers to a different feature as a piston, it does not preclude the examiner from interpreting plunger 24 as said piston. A piston is simply a sliding piece moved by or against fluid pressure, such as said plunger. Further, once again the examiner points out that insert molded is a product by process, and the process of insert molding would



Art Unit: 3763

not structurally change Noce's device, especially in light of the plunger, which has piston portion as part of the outer layer of plunger, insert molded onto the threaded shank.

Finally, regarding claim 3, the examiner points out that overmolding is again a product by process. The prior art device is not structurally different than applicant's claims nor would the process of overmolding result in a structurally different product.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELISSA A. SNYDER whose telephone number is (571)272-6486. The examiner can normally be reached on Monday through Friday, 9am to 5:30pm.

Art Unit: 3763

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on (571) 272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/MELISSA A SNYDER/  
Examiner, Art Unit 3763

/Nicholas D Lucchesi/  
Supervisory Patent Examiner, Art Unit 3763